

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PETER F. GAITO ARCHITECTURE, LLC d/b/a
PETER F. GAITO AND ASSOCIATES, and
PETER F. GAITO,

Plaintiffs,

-against-

NOTICE OF MOTION

08 Civ. 6056 (WCC)

SIMONE DEVELOPMENT CORP., SIMONE CHURCH
STREET LLC, JOSEPH SIMONE, THOMAS METALLO,
SACCARDI & SCHIFF, INC., TNS DEVELOPMENT
GROUP LTD., and SLCE ARCHITECTS, LLP,

Defendants.
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PLEASE TAKE NOTICE that upon the annexed Affidavit of Joseph Simone, sworn to on November 11, 2008, the Affidavit of Thomas Metallo, sworn to on November 18, 2008, the exhibits attached thereto, and the Memorandum of Law dated November 19, 2008, defendants Simone Development Corp., Simone Church Street LLC, Joseph Simone, Thomas Metallo, and TNS Development Group Ltd. (collectively, the "Simone Defendants") will move this Court on December 22, 2008 at 9:30 am or as soon thereafter as counsel may be heard, before the Honorable William C. Conner, United States Courthouse, 300 Quarropas St., White Plains, New York 10601, for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and 28 U.S.C. §1367(c)(3) granting the Simone Defendants' motion to dismiss the Amended Complaint on the grounds that it fails to state a claim upon which relief can be granted, the Court should decline to exercise supplemental jurisdiction over the pendent state law claims, and the Simone Defendants are entitled to judgment as a matter of law, together with such other, further

and different relief as the Court may deem just and proper in the circumstances and the costs and disbursements of this motion.

Dated: White Plains, New York
November 19, 2008

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